

HON'BLE SRI JUSTICE L.NARASIMHA REDDY
WRIT PETITION No. 9470 of 2007

Dated 02.08.2007

Between:

V.Sivasankara Sastry.

...Petitioner

and

The Divisional Co-operative Officer and others.

...Respondents

HON'BLE SRI JUSTICE L.NARASIMHA REDDY
WRIT PETITION No. 9470 of 2007

ORDER:

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The petitioner was allotted a plot of 280 square yards in Survey No.227/1 of Bahadurpalli Village, Medchal Taluk, Ranga Reddy District by Sri Sainath Co-operative Housing Society Limited, second respondent herein. A sale deed was executed on 16.10.1981. He challenges an order, dated 20.04.2001, passed by the Divisional Co-operative Officer, first respondent herein in A.R.C.No.302/2001-D. The petitioner contends that the said proceedings were initiated against one Sri V.Siva Rama Sastry and on the basis of an *ex parte* order passed therein, he was sought to be evicted from the said plot.

Through the impugned order, the first respondent directed the petitioner to pay a sum of Rs.28,000/- on or before 30.06.2001 and the failure, in this regard, was to result in cancellation of registration. On the ground that the petitioner did not comply with the direction, the allotment was cancelled and the plot is said to have been allotted partly in favour of respondent No.4 and partly in favour of respondent No.5.

Respondents 4 and 5 filed a counter affidavit, stating that the petitioner was very much aware of the proceedings and the writ petition is

not maintainable, particularly, when the remedy of appeal exists under the A.P. Co-operative Societies Act, 1964 (for short 'the Act').

Heard learned counsel for the petitioner, learned Government Pleader for Co-operation, learned counsel for respondent Nos.2 and 3 and learned counsel for respondent Nos.4 and 5.

There is no dispute that the petitioner was allotted a plot in Survey No.227/1 and that the same was transferred in his favour through sale deed, dated 16.10.1981. The second respondent initiated proceedings before the first respondent under Section 61 Act and the same was taken up as A.R.C.No.302/2001-D. The name of the sole defendant in that case was shown as 'Sri V.Siva Rama Sastry'. The order passed therein is very brief, which reads as under:

"An arbitration reference case has been file by Sri Sainath Cooperative Housing Society Limited under Section 61 of the Act against Sri V.Siva Rama Sastry a member.

Summons were issued to the defendant but the summons are returned with postal endorsement eight times continuously out. Hence returned to sender". As this development charges the case is decided based on records.

ORDER:

Sri V.Siva Rama Sastry is called upon to pay Rs.28,000/- (Rupees Twenty Eight Thousand Only) on or before 30.06.2001. Failing which the society directed to cancel the registration and allot the same to waiting list members."

Basically, the institution of the proceedings by the second respondent was defective, inasmuch as the name of a different person was shown, either deliberately or inadvertently. Secondly, the first respondent did not verify the matter properly. A simple comparison of the cause title in the case with the description of the parties in the sale deed would have avoided such a serious injustice. Even assuming that the description of the parties was correct and that the defendant therein remained *ex parte*, even after receiving the notice, the first respondent was under obligation to state the reasons, in support of his conclusion.

Except directing that a sum of Rs.28,000/- must be paid, the basis for such a direction is not at all indicated. The whole exercise was vitiated, on account of non-application of mind, arbitrariness and carelessness. The rights that have accrued to the petitioner cannot be permitted to be defeated, through such an illegal and untenable proceedings.

Therefore, the writ petition is allowed and the impugned order is set aside. The matter is remanded to the first respondent for fresh consideration and disposal. He shall ensure that the cause title is properly amended and notice is issued to the affected parties. He shall also furnish the reasons in support of his conclusion. There shall be no order as to costs.

JSU

02.08.2007